

BEFORE  
GOVERNING BOARD  
SWEETWATER UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RESPONDENTS LISTED IN EXHIBIT “A”

OAH No. 2013030508

**PROPOSED DECISION**

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Chula Vista, California, on May 17, 2013.

Mark R. Bresee, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented Complainant Edward M. Brand, Ed.D., Superintendent of the Sweetwater Union High School District.

Fern M. Steiner, Esq., Smith, Steiner, Vanderpool & Wax, APC.

The matter was submitted on May 17, 2013.

**SUMMARY OF PROPOSED DECISION**

The Board of Education of the Sweetwater Union High School District determined to reduce or discontinue particular kinds of services provided by teachers for budgetary reasons. The decision was not related to the competency or dedication of the individuals whose services are proposed to be reduced or eliminated.

The Sweetwater Union High School District staff carried out the Board of Education’s decision by using a selection process involving review of credentials and seniority, “bumping,” and breaking ties between/among employees with the same first dates of paid probationary service. The selection process was in accordance with the requirements of the Education Code.

## FACTUAL FINDINGS

1. Respondents listed on Exhibit “A” (Respondents) are certificated employees of the Sweetwater Union High School District (District).

2. On March 11, 2013, the Superintendent, through his designee, the Assistant Superintendent of Human Resources (Assistant Superintendent), recommended to the District’s governing board (Board) that the District reduce or eliminate particular kinds of services no later than the beginning of the 2013-2014 school year.

3. On March 11, 2013, the Board adopted Resolution No. 4198 reducing or eliminating particular kinds of services for the ensuing school year, establishing criteria for resolving ties among certificated employees with the same date of first paid probationary service.<sup>1</sup> The Board directed the Superintendent or designated representative to send notices to all employees possibly affected by the reduction or elimination of particular kinds of services. Attached to Resolution No. 4198 is Exhibit “A”, which sets forth the following particular kinds of services to be reduced or eliminated:

### COUNSELOR

<u>PKS</u>	<u>FTE</u>
Counselor-Adult School	1.51
Counselor	4.00
<b>TOTAL COUNSELOR FTE</b>	<b>5.51</b>

### MANAGEMENT

<u>PKS</u>	<u>FTE</u>
Assistant Principal (3)	3.00
Director, Career Tech Education	1.00
Director, Professional Development	1.00
Principal- Adult School	1.00
School Psychologist	1.00
<b>TOTAL MANAGEMENT FTE</b>	<b>7.00</b>

### REGIONAL OCCUPATIONAL PROGRAM (ROP)

<u>PKS</u>	<u>FTE</u>
Audio Technology	0.1481
Auto Engine Perf	0.2962
Auto Fundamentals	0.1481
Auto Suspension Steering Brakes	0.4444

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<sup>1</sup> Attached to Resolution No. 4198 is Exhibit B – Tiebreaking Criteria Pursuant to Education Code Section 44955(b)

Auto Technology	0.5926
Biomedical Innovation	0.2963
Business Computer Fundamentals	2.8295
Business Environments	0.1481
Business Technology	0.9777
Cabinet Making	0.6222
Career Training for Transition	0.3851
Civil Engineering & Architecture	0.2962
Computer Science	0.1481
Computerized Accounting	0.2963
Computerized Graphic Design	0.5926
Criminal Justice Careers	0.88
Culinary Arts	1.1852
Culinary Mgmt	0.1481
Customer Service Specialist	0.1185
Digital Arts	0.5926
Financial Sales and Services	0.1778
Fire Science	0.4463
Gateway to Technology	0.8847
General Construction	0.1481
Health Care Essentials	0.8844
Human Body Systems	0.1481
Intro to Construction	0.4444
Intro to Engineering	1.4814
Intro to Medical Careers	0.1481
Intro to Medical Pathways	0.2681
Intro to Plumbing	0.7363
Martime Deck Seaman/QMED	0.2963
Martime Fundamentals	0.1481
Medical Asst Admin	0.2962
Medical Asst Clinic	0.2963
Medical Interventions	0.1481
Medical Terminology	1.9259
Multimedia Production	2.5184
Musical Theater Dance	0.1481
Phlebotomy	1.61
Physical Therapy I	1.7789
Physical Therapy II	0.2222
Physical Therapy II	0.0741
Physical Therapy III	0.0741
Power, Energy & Transmission	0.1481
Prin of Biomedical Science	0.1481
Principles of Engineering	0.5925

Professional Musical Theater Performer	0.65
ROP Customer Services Specialist	0.1481
ROP First Responder	0.1481
ROP Intro to Medical Pathway	0.1185
Rop Medical Terminology	0.5037
ROP Sales & Marketing	0.89
Sales & Marketing	0.7407
Supermarket Oper	0.1481
Teacher on Special Assignment	3.12
Veterinary Asst I	0.18
Video Production	1.9532
Welding & Metal Fabrication	0.89
<b>TOTAL ROP FTE</b>	<b>36.8294</b>

#### **REGULAR GRADE 7-12 PROGRAM**

<b><u>SUBJECT</u></b>	<b><u>TOTAL FTE</u></b>
English	1.00
Health	1.00
History	1.00
Life Science	1.00
Physical Education	1.00
Spanish	2.00
<b>TOTAL 7-12 FTE</b>	<b>7.00</b>

The proposed reductions totaled 56.3394 full-time equivalent (FTE) positions.

4. On March 14, 2013, the District's Assistant Superintendent of Human Resources served permanent and probationary certificated Respondents with "Notice of Recommendation That Services Will Not Be Required" (Notice). The Notice included a copy of Resolution No. 4198, a copy of the Accusation, informed each Respondent that he/she had a right to request a hearing and a blank Request for Hearing/Notice of Defense form, accompanied by relevant sections of the Evidence Code and Government Code. In addition, the Notice informed each Respondent that if he/she wished to request a hearing that the Request for Hearing/Notice of Defense must be filed no later than March 28, 2013, at the District's office to the Director of Human Resources (Director).

Each Respondent submitted a timely Request for Hearing/Notice of Defense to determine if there was cause for not re-employing him or her for the ensuing school year.

5. On April 5, 2013, the District served Respondents with a Notice of Hearing setting the hearing for April 18, 2013, in accordance with Government Code section 11509.

6. On April 12, 2013, counsel for the District and counsel for 32 of 38 Respondents filed a Joint Request for Continuance of Hearing (Joint Request) in this matter. The Joint Request was served on the other six Respondents, none of whom opposed the request.

7. On April 16, 2013, Administrative Law Judge Mary Agnes Matyszewski issued an Order granting the continuance and setting a new hearing date of May 17, 2013. Pursuant to Education Code section 44949, subdivision (e), the Order granting the continuance of the hearing extends the statutory deadline for providing a final notice of layoff by 28 days.<sup>2</sup> Specifically, the District must serve Respondents with a final notice of layoff before June 15, 2013.

8. In accordance with Government Code section 11509, on April 16, 2013, the District served Respondents with an Amended Notice of Hearing, setting the hearing for May 17, 2013.

9. All prehearing jurisdictional requirements were satisfied.

10. There was no appearance by or on behalf of Respondent Yvette Nelson.

11. The District considered all known attrition, including resignations and retirements, in determining the actual number of final layoff notices to be delivered to its certificated employees. As a result of attrition and after a “more refined analysis,” the District proposed to reduce or eliminate 49.1572 FTE positions.

During the hearing, the District rescinded layoff notices previously issued to Ana Abrego, Nicholas Anderson, Amy Miranda and Tabitha Ross. Thus, the District proposes to reduce or eliminate 44.1572 FTE positions.

12. The District’s Director was responsible for implementing the technical aspects of the layoff. She developed a seniority list for probationary or permanent certificated staff that included, among other matters, the name of the certificated employee, assignment, seniority date, credentials and status.

The Director used the seniority list to develop a proposed order of layoff list to determine the least senior employees currently assigned to provide the service being reduced. Then, the District determined whether the least senior employees held credentials in another area that would entitle them to “bump” other junior employees. In determining who would be laid off for the service reduced, the Director counted the number of reductions and determined the impact on incumbent staff in inverse order of seniority. Then, she checked the credentials of each affected individual and whether he/she could “bump” another employee. The counselors whose positions were identified for layoff displaced or bumped more junior counselors.

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<sup>2</sup> Education Code section 44955, subdivision (c)

13. The services that the Board proposed to reduce were “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious but constituted a proper exercise of discretion.

14. The Board’s reduction or discontinuance of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuance of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections are satisfied.

2. A District may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists under Education Code sections 44949 and 44955 for the Sweetwater Union High School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position that he/she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Poppers v. Tamalpais Union High School Dist.* (1986) 184 Cal.App.3d 399, 405.)

5. No employee with less seniority than any Respondent is being retained to perform a service that any Respondent is certificated and competent to render.

6. All arguments not addressed herein are not supported by the evidence and/or the law and therefore rejected.

### ORDER

1. The layoff notices issued to Respondents Ana Abrego, Nicholas Anderson, Amy Miranda and Tabitha Ross are rescinded. The Accusations against Respondents Ana Abrego, Nicholas Anderson, Amy Miranda and Tabitha Ross are dismissed.

2. Except as provided in paragraph one of this Order, the Accusations served on Respondents listed on Exhibit "A" are sustained. The Sweetwater Union High School District shall give notice to these Respondents before June 15, 2013, that their services will not be required for the 2013-2014 school year because of the reduction or discontinuance of particular kinds of services.

3. Notice shall be given in inverse order of seniority.

DATED: May 22, 2013

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VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings